FARAD CONTINUATION SHEET

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 534 OF 2004

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

CORAM: A.S. OKA, J.
DATE : 2nd September, 2004.

P.C.:-

1. The Second Appeal is admitted on substantial questions of law incorporated in grounds (f), (g) and (h). Shri Patil waives service for Respondents. Taken up for hearing forthwith by consent of the parties.

2. The Advocates appearing for the parties have filed consent minutes of the order duly signed by them. The minutes of the order provide for setting aside the Judgments and Decrees of the courts below and for remanding the suit to the Trial Court. The learned counsel appearing for the parties pointed out

that Regular Civil Suit No.681 of 2002 is pending between the same parties in the court of Learned Civil Judge (J.D.) at Bhiwandi and considering the pendency of the said suit, it is desirable that both the suits should be heard together. The minutes of order filed by the parties are taken on record and marked 'X' for identification.

3. In view of the said minutes of order and submissions made by the learned counsel appearing for the parties, it is not necessary to record reasons for disposing of the Second Appeal.

4. The Second Appeal is disposed of by passing the following order.

(i) The Appeal is partly allowed with no orders as to costs. The impugned Judgments and Decrees are quashed and set aside and Regular Civil Suit No. 360 of 1998 is remanded to the Court of the Civil Judge (Junior Division,) Bhiwandi.

(ii) After remand the Regular Civil Suit No. 360 of 1998 shall be heard with Regular Civil Suit No. 681 of 2002. If both the suits are not pending before the same Court i.e. the Court of the Civil Judge (Junior Division,) Bhiwandi, the Learned District Judge, Thane will pass a direction for transfer of both the suits to one and the same Court.

(iii) The learned Trial Judge shall allow the parties to lead further evidence, if any.

(iv) The learned Trial Judge will decide both the suits as expeditiously as possible and preferably on or before 31st August 2005.

(v) Till the final disposal of the Regular Civil Suit No. 360 of 1998 the interim relief granted during the pendency of

the said suit will continue to operate.

(vi) The Trial Court will decide the suit on its own merits without being influenced by continuation of order of interim relief passed by this Court. While deciding the suit, the learned Trial Judge will consider the evidence which is already led by the parties before remand and the evidence which may be adduced after remand.

5. All contentions on merits are kept open.

. C.C. expedited.

Sd/-

JUDGE